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ABSTRACT

This is a report on House bill H.R. 4745, the Sexual Abuse Act of 1986, which would amend title 18 of the United States Code to modernize and reform federal rape statutes. The document opens with the actual text of the amendment. A section on the background of current federal rape law discusses the crime of rape as primarily a state, not federal, law enforcement problem and reviews the history of the definition of rape and its current meaning in federal law. The intent of the legislation is described in these points: (1) defining offenses in gender-neutral terms; (2) defining offenses so that a trial focuses on the conduct of the defendant, instead of the conduct of the victim; (3) expanding the offenses to reach all forms of sexual abuse; (4) abandoning the doctrines of resistance and spousal immunity; and (5) expanding the federal jurisdiction to include all federal prisons. A section-by-section analysis discusses the effects of each section. Discussions of inflationary impact and cost estimates are included. Finally, the changes this amendment makes in individual sections of Title 18, United States Code, are shown with existing law proposed to be omitted and new wording proposed to be included. (ABL)

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99TH CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES

REPORT
99-594

SEXUAL ABUSE ACT OF 1986

MAY 9, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 4745]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4745) to amend title 18, United States Code, with respect to sexual abuse, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sexual Abuse Act of 1986".

SEC. 2. DEFINITION OF SEXUAL ABUSE OFFENSES.

Title 18, United States Code, is amended by inserting after chapter 109 the following new chapter:

"CHAPTER 109A—SEXUAL ABUSE

"Sec.

"2241. Aggravated sexual abuse.

"2242. Sexual abuse.

"2243. Sexual abuse of a minor or ward.

"2244. Abusive sexual contact.

"2245. Definitions for chapter.

"§ 2241. Aggravated sexual abuse

"(a) BY FORCE OR THREAT.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly causes another person to engage in a sexual act—

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"(1) by using force against that other person; or"(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

"(b) By OTHER MEANS.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly—

"(1) renders another person unconscious and thereby engages in a sexual act with that person; or

"(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—

"(A) substantially impairs the ability of that other person to appraise or control conduct; and

"(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

"(c) WITH CHILDREN.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

"(d) STATE OF MIND PROOF REQUIREMENT.—In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

"§ 2242. Sexual abuse

"Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly—

"(1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or

"(2) engages in a sexual act with another person if that other person is—

"(A) incapable of appraising the nature of the conduct; or

"(B) physically incapable of declining participating in, or communicating unwillingness to engage in, that sexual act;

or attempts to do so, shall be fined under this title, imprisoned not more than 20 years, or both.

"§ 2243. Sexual abuse of a minor or ward

"(a) OF A MINOR.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who—

"(1) has attained the age of 12 years but has not attained the age of 16 years; and

"(2) is at least four years younger than the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than five years, or both.

"(b) OF A WARD.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who is—

"(1) in official detention; and

"(2) under the custodial, supervisory, or disciplinary authority of the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than one year, or both.

"(c) DEFENSES.—(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.

"(2) In a prosecution under this section, it is a defense, which the evidence, that the persons engaging in the sexual act were at that time married to each other.

"(d) STATE OF MIND PROOF REQUIREMENT.—In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew—

"(1) the age of the other person engaging in the sexual act; or

"(2) that the requisite age difference existed between the persons so engaging.

"§ 2244. Abusive sexual contact

"(a) SEXUAL CONDUCT IN CIRCUMSTANCES WHERE SEXUAL ACTS ARE PUNISHED BY THIS CHAPTER.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in or causes sexual contact with or by another person, if so to do would violate—

"(1) section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than five years, or both;

"(2) section 2242 of this title has the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;

"(3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than one year, or both; or

"(4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined not more than \$5,000, imprisoned not more than six months, or both.

"(b) IN OTHER CIRCUMSTANCES.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in sexual contact with another person without that other person's permission shall be fined not more than \$5,000, imprisoned not more than six months, or both.

"§ 2245. Definitions for chapter

"As used in this chapter—

"(1) the term 'prison' means a correctional, detention, or penal facility;

"(2) the term 'sexual act' means—

"(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

"(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

"(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; and

"(3) the term 'sexual contact' means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

"(4) the term 'serious bodily injury' means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(5) the term 'official detention' means—

"(A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or

"(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employ-

ee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation; but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency.”.

SEC. 3. CONFORMING AND RELATED AMENDMENTS.

(a) **OTHER TITLE 18 AMENDMENTS.**—Title 18, United States Code, is amended—

- (1) by striking out chapter 99;
- (2) in subsection (a) of section 1113 by striking out “or rape”;
- (3) in subsection (b) of section 1113 by striking out “rape” and inserting in lieu thereof “a felony under chapter 109A”;
- (4) in subsection (a) of section 1111 by striking out “, rape” and inserting in lieu thereof “aggravated sexual abuse or sexual abuse”;
- (5) in section 1153—
 - (A) in the first paragraph, by striking out “rape, involuntary sodomy, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape,” and inserting in lieu thereof “a felony under chapter 109A,”; and
 - (B) in each of the second and third paragraphs, by striking out “, involuntary sodomy,”;
- (6) in paragraph (12) of section 3185 by striking out “Rape,” and inserting in lieu thereof “A felony under chapter 109A of this title,”; and
- (7) in the table of chapters at the beginning of part I—
 - (A) by striking out the item relating to chapter 99; and
 - (B) by inserting after the item relating to chapter 109 the following new item:

“109A. Sexual Abuse 2241.”.

(b) **NON-TITLE 18 PROVISIONS.**—(1) The Public Health Service Act is amended—

- (A) in section 1904(a)(1)(G) (42 U.S.C. 300w-3(a)(1)(G)) by striking out “rape victims and for rape prevention” and inserting in lieu thereof “victims of sex offenses and for prevention of sex offenses”; and
- (B) in section 1905(c)(6) (42 U.S.C. 300w-4(c)(6)) by striking out “rape” and inserting “sex offense” in lieu thereof.

(2) The heading of title VI of the Mental Health Systems Act is amended by striking out “RAPE” and inserting “SEX OFFENSE” in lieu thereof.

(3) The heading for section 601 of the Mental Health Systems Act (42 U.S.C. 9511) is amended by striking out "RAPE" and inserting "SEX OFFENSE" in lieu thereof.

(4) Section 601(a) of the Mental Health Systems Act (42 U.S.C. 9511(a)) is amended by striking out "Rape" and inserting "Sex Offenses" in lieu thereof.

(5) Section 601(a)(1) of the Mental Health Systems Act (42 U.S.C. 9511(a)(1)) is amended—

(A) in subparagraph (B), by striking out "the act of rape" and inserting "sex offenses" in lieu thereof;

(B) in subparagraph (E), by striking out "rape" and inserting "a sex offense" in lieu thereof; and

(C) by striking out "rape" each place it appears other than in subparagraphs (B) and (E) and inserting "sex offenses" in lieu thereof.

(6) Section 601(a)(3) of the Mental Health Systems Act (42 U.S.C. 9511(a)(3)) is amended by striking out "rape" each place it appears and inserting "sex offenses" in lieu thereof.

(7) Section 601(e) of the Mental Health Systems Act (42 U.S.C. 9511(e)) is amended by striking out "rape" the first place it appears and inserting "sex offense" in lieu thereof.

(8) Section 902(k)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472(k)(1)), is amended by striking out "2031, 2032" and inserting in lieu thereof "chapter 109A".

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 4745 is to modernize and reform Federal rape statutes.

BACKGROUND

CURRENT FEDERAL LAW

The crime of rape, although very serious, is not a major Federal law enforcement problem. The Administrative Office of the United States Courts, for example, reports a total of 86 Federal rape cases commenced in the twelve months ending September 30, 1983.¹ In contrast, more than 78,000 forcible rapes were reported to law enforcement authorities during 1983.² Rape, therefore, is principally

¹ Admin. Ofc. of U.S. Courts, Federal Judicial Workload Statistics A-31 (1983). See *Federal Rape Law Reform: Hearings on Federal Rape Law Reform before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary*, 98th Cong., 2d Sess. 93 (1984) (testimony of Asst. Atty. Gen. Victoria Toensing) (the Justice Department brings about 140 prosecutions for sex offenses annually, about 80 of which are for conduct classified as rape).

² F.B.I., Uniform Crime Reports for the United States 13 (1984). This figure does not include "statutory rape (without force)." *Id.*

a State law enforcement problem, and in recent years a number of States have reformed their rape law.³

Federal law currently makes it a crime to commit "rape",⁴ to commit an assault with intent to commit rape,⁵ and to "carnal know" a female (other than one's wife) under the age of 16.⁶ Federal authorities can prosecute these offenses if they are committed within the special maritime and territorial⁷ or special aircraft⁸ jurisdiction of the United States, or if they are committed in Indian country.⁹

At early common law, rape consisted of unlawful sexual intercourse with ("carnal knowledge" of) a woman without her consent.¹⁰ Later on, however, the definition came to be "carnal knowledge of a woman *forcibly* and against her will."¹¹ The introduction of the force concept into the early common law definition led to the notion that the victim must offer utmost resistance.¹² Over time the offense of rape came to be statutorily defined, and other conduct came to be treated as rape, most notably consensual intercourse with a young female ("statutory rape").¹³ It is difficult, however, to speak of a single common law definition of the term because some of the features of the common law crime of rape vary from jurisdiction to jurisdiction.

Federal statutes do not define the term "rape." The basic statute merely provides that whoever "commits rape" within the special maritime and territorial jurisdiction commits a Federal offense. There are, moreover, relatively few cases interpreting this statute so it is not possible to delineate with certainty the outer limits of the conduct proscribed by this statute. The term "rape" as used in this Federal statute has been held to have its common law mea-

³ See H. FEILD & L. BIENEN, JURORS AND RAPE: A STUDY IN PSYCHOLOGY AND LAW 153-54, 214-58 (1980) (contains a summary of each state's rape laws).

⁴ 18 U.S.C. 2031.

⁵ 18 U.S.C. 113(a).

⁶ 18 U.S.C. 2032.

⁷ 18 U.S.C. 2031 (rape), 113(a) (assault with intent to commit rape), 2032 (carnal knowledge). The special maritime and territorial jurisdiction of the United States is defined in 18 U.S.C. 49 U.S.C. App. 1472(k)(1).

⁸ 49 U.S.C. App. 1472(k)(1).
⁹ If the offense is committed in Indian country by a non-Indian, the offense is prosecuted under 18 U.S.C. 1152 (the "General Crimes Act"). If the offense is committed in Indian country by an Indian, the offense is prosecuted under 18 U.S.C. 1153 (the "Major Crimes Act").

¹⁰ R. PERKINS, CRIMINAL LAW 152 (2d ed. 1969).

¹¹ *Id.* at 61 (quoting from Blackstone's Commentaries) (emphasis added).

¹² See *id.* at 161-62. Federal law does not require utmost resistance. *Laughlin v. United States*, 368 F.2d 558, 559 (9th Cir.), *cert. denied*, 386 U.S. 1041 (1966).

At its most rigorous, the utmost resistance doctrine required not only that the victim struggle with an intensity reflecting her physical capacity to resist the unwanted sexual intimacy, but also that her efforts not diminish during the course of the offense. See MODEL PENAL CODE AND COMMENTARIES § 213.1, comment at 304-05 (1980). Such a doctrine served only to increase the risk of harm to victims.

¹³ See R. PERKINS, CRIMINAL LAW 152-53 (2d ed. 1969). See also MODEL PENAL CODE AND COMMENTARIES § 213.1, comment at 323 (1980) (noting that rape at common law "included consensual relations with a girl under the age of 10 years" but suggesting that such offense "is commonly called 'statutory rape', perhaps because it was originally engrafted onto the common law statute.").

¹⁴ 18 U.S.C. 2031, which is incorporated by reference in 18 U.S.C. 1152 and 49 U.S.C. App. 1472(k)(1). Similarly, 18 U.S.C. 113(a) makes it an offense to commit assault with intent to commit "rape" without defining "rape." The Major Crimes Act, 18 U.S.C. 1153, which makes an offense for an Indian to commit "rape" in Indian country, by its own terms incorporates the definition of rape applicable to 18 U.S.C. 2031.

ing, and it appears that this refers to the later common law definition.¹⁵

What role "force" plays in the Federal rape offense is difficult to know with certainty. The Supreme Court has suggested that the prosecution must show absence of consent by the victim and use of force by the offender.¹⁶ To the extent that this requires physical violence against the person of the victim, it would be inconsistent with the policy behind the rape offense—protecting women from sexual intercourse by imposition.¹⁷

Moreover, the Supreme Court itself has seemed to indicate that physical violence against the victim is not necessary. In *Mills v. United States*,¹⁸ the Court reversed a rape conviction because of improper instructions to the jury. The trial court had said that "all the force that need be exercised, if there is no consent, is the force incident to the commission of the act." The Court noted that the trial court's instruction was correct "in a case where the woman's will or resistance had been overcome by threats or fright, or she had become helpless or unconscious, so that while not consenting she still did not resist."¹⁹ The Court reversed the conviction, however, because the trial court applied its instructions too broadly—to a situation where nonconsent was "no more than a mere lack of acquiescence."²⁰

While the exact boundaries of the Federal rape offense may not be known with precision, two matters are clear. First, only a woman can be the victim of the offense; present Federal statutes do not proscribe homosexual rape.²¹ Second, Federal law,²² like the common law,²³ does not require corroboration of the rape victim's testimony.

¹⁵ See *Williams v. United States*, 327 U.S. 711, 715 (1946) (dictum), citing *Oliver v. United States*, 230 F. 971 (9th Cir.), cert. denied, 241 U.S. 670 (1916). See also *Mills v. United States*, 164 U.S. 644, 648-49 (1896).

The constitutionality of 18 U.S.C. 2031 has been sustained against a vagueness attack on the basis that "rape" is a term of known and determinate meaning in the common law. *Oliver v. United States*, 230 F. 971 (9th Cir.), cert. denied, 241 U.S. 670 (1916). The Ninth Circuit, however, did not set forth what that known meaning was.

The Ninth Circuit may be moving towards a different definition. In *United States v. Smith*, 574 F.2d 988, 990 (9th Cir.), cert. denied, 431 U.S. 923 (1978) (dictum), the court defined rape to be "carnal knowledge of a female by force or threat of force", making no reference to lack of consent. The authorities relied upon in *Smith*, however, do not support that definition of rape. The principal authority relied upon by the *Smith* court, in fact, *Henry v. United States* 432 F.2d 114, 119 (9th Cir.), modified on other grounds, 434 F.2d 1283, cert. denied, 400 U.S. 1011 (1971), defined rape to be "carnal knowledge of a female by force without her consent."

¹⁶ *Williams v. United States*, 327 U.S. 711, 715 (1946) (dictum).

¹⁷ See MODEL PENAL CODE AND COMMENTARIES § 213.1, comment at 275, 301 (1980) ("The law of rape protects the female's freedom of choice and punishes unwanted and coerced intimacy."). To require physical violence also would be inconsistent with the traditional doctrine that defines rape to include sexual intercourse "with a woman who was unconscious, drugged or mentally incompetent to understand the significance of the sexual act." *Id.* at 276.

¹⁸ 164 U.S. 644 (1897).

¹⁹ *Id.* at 648.

²⁰ *Id.*

²¹ *United States v. Smith*, 574 U.S. 988 (9th Cir.), cert. denied, 431 U.S. 923 (1978) (18 U.S.C. 2031). 18 U.S.C. 2032, by its own terms, protects only females.

²² *United States v. Smith*, 303 F.2d 341 (4th Cir. 1962) (18 U.S.C. 2031); *United States v. Shipp*, 409 F.2d 864 (4th Cir.) cert. denied 396 U.S. 864 (1969) (18 U.S.C. 2032). See *Hearings on Revision of the Federal Criminal Code before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary*, 96th Cong., 1st Sess. 3972 (1979) (Congressional Research Service memorandum) ("Corroboration has never been a requirement of the federal law and the overwhelming majority of state jurisdictions have abandoned it.")

²³ 7 J. WIGMORE, EVIDENCE § 2061 (3d ed. 1940).

The Federal rape statute probably does incorporate the spousal immunity doctrine, since "at common law a man could not commit rape by forcing his wife to engage in intercourse."²⁴ There are no Federal cases on the matter, however, and language in a Ninth Circuit case suggests that a spousal exemption might not be a part of Federal law.²⁵

There is little case law interpreting the "statutory rape" provision of Federal law.²⁶ By the language of the provision, only a female can be the victim of the offense. Force or lack of consent is not an element of the offense, which is complete upon the slightest penetration.²⁷ The statute sets the age of consent at 16.²⁸

The assault with intent to commit rape provision of Federal law²⁹ requires as an element of the offense that the defendant have a specific intent to have intercourse. The touching of a woman's genitals or intimate parts, therefore, will not sustain a conviction, absent proof that the defendant intended to have intercourse.³⁰

The Assimilative Crimes Act³¹ may permit Federal authorities to prosecute for sex offenses (other than rape, carnal knowledge of a female under the age of 16, and assault with intent to commit rape) in Federal enclaves by incorporating State law for the purposes of the Federal prosecution. Thus, for example, the Ninth Circuit has permitted a Federal prosecution for the State crime of oral copulation that is committed within the special territorial jurisdiction of the United States.³² When State law can be assimilated, however, is a matter of some disagreement.³³

²⁴ MODEL PENAL CODE AND COMMENTARIES § 213.1, comment at 341 (1980). See also R. PERKINS, CRIMINAL LAW 156 (2d. 1969) ("A man does not commit rape by having sexual intercourse with his lawful wife, even if he does so by force and against her will."); Bienen, *Rape III—National Developments in Rape Reform Legislation*, 6 WOMEN'S RTS. L. REP. 170, 184 (1980). But see Drucker, *Comment: The Common Law Does Not Support a Marital Exception for Forcible Rape*, 5 WOMEN'S RTS. L. REP. 181 (1979).

The Ninth Circuit has held that an indictment under 18 U.S.C. 2031 need not allege that the rape victim was not the defendant's wife. *United States v. Lone Bear*, 579 F.2d 522, 525 (9th Cir. 1978). If the defendant or the evidence gives "colorable indication" of a marital relationship between the victim and the defendant, however, then the prosecution must prove that the victim was not the defendant's wife. "In essence, the issue of whether or not the victim is married to the defendant is at most a defense to be raised by the defendant." *Id.*

A husband may be found guilty of rape in most jurisdictions on an accomplice liability theory. See *People v. Damer*, 28 Ill.2d 464, 193 N.E. 2d 25 (1963); *Elliot v. State*, 190 Ga. 803, 10 S.E.2d 843 (1940); Note, *Abolishing the Marital Exemption for Rape: A Statutory Proposal*, 1983 U. ILL. L. REV. 201, 202 n. 5.

²⁵ See *United States v. Lone Bear*, 579 F.2d 522 (9th Cir. 1978). ("Whether this traditional rule [of spousal immunity] applies in a Federal prosecution under sections 1153 and 2031 we need not decide today.")

²⁶ 18 U.S.C. 2032.

²⁷ See *United States v. Williams*, 327 U.S. 711, 715-17 (1946); *In re Lane*, 135 U.S. 443, 448 (1890) (construing predecessor to 18 U.S.C. 2032); *United States v. Bear Ribe*, 562 F.2d 563 (8th Cir.), *cert. denied*, 434 U.S. 974 (1977).

²⁸ The common law set the age of consent at 10. MODEL PENAL CODE AND COMMENTARIES § 213.1, comment at 323 (1980); R. PERKINS, CRIMINAL LAW 152 (2d ed. 1969).

²⁹ 18 U.S.C. 113(a).

³⁰ *Oyamada v. United States*, 44 F.2d 564 (9th Cir. 1930); *United States v. Eades*, 455 F. Supp. 436 (D. Md. 1978), *aff'd in part, rev'd in part*, 615 F. 2d 617 (4th Cir.), *reh. en banc*, 633 F.2d 1075 (4th Cir. 1980), *cert. denied*, 450 U.S. 1001 (1981).

³¹ 18 U.S.C. 13. "Basically, the Act provides that when something is done on a Federal reservation which is not made criminal by the laws of the United States but which is a crime under the laws of the surrounding jurisdiction (State, territory, possession or district), then the conduct should be punished in accordance with the local law treating the offense." H.R. REP. NO. 1396, 96th Cong., 2d Sess. 425 (1980).

³² *Smayda v. United States*, 352 F. 2d 251 (9th Cir. 1965), *cert. denied*, 382 U.S. 981 (1966).

³³ See H.R. REP. NO. 1396, 96th Cong., 2d Sess. 426-27 (1980).

PREVIOUS LEGISLATIVE CONSIDERATION

Reform of Federal rape statutes began as a part of the project to revise and recodify Federal criminal laws. Late in the 96th Congress, the House Judiciary Committee reported a criminal code revision bill that included provisions reforming Federal rape laws.³⁴ Because the bill was reported late in the Congress, however, the House did not get a chance to act on the legislation. Late in the 97th Congress, the Subcommittee on Criminal Justice reported a criminal code revision bill that also included rape reform provisions.³⁵

Last Congress, the Subcommittee on Criminal Justice conducted two hearings on legislation sponsored by Reps. Hoyer, Carr, Fiedler and some 35 other Members of Congress.³⁶ A wide variety of witnesses was heard from, including a state supreme court justice, local police and prosecutors, the United States Department of Justice, and persons who provide services and assistance to rape victims. The Subcommittee on Criminal Justice reported favorably on the bill on September 13, 1984. The Subcommittee's bill was added to a crime package that passed the House by a vote of 416 to 16.³⁷ The Subcommittee's bill, however, did not become part of the Comprehensive Crime Control Act, however.

The bill reported by the Subcommittee and passed by the House last Congress was reintroduced this Congress as H.R. 596. Testimony on it was received on April 29, 1986 from its principal sponsor, Representative Hoyer, Deputy Assistant Attorney General Mark Richard of the Justice Department's Criminal Division, and Kerry Lobel, acting executive director of the National Coalition Against Domestic Violence, an organization of more than a thousand shelters and programs that serve battered women. On April 30, the Subcommittee marked up the bill and approved a number of minor and technical changes in it. The Subcommittee then unanimously voted to recommend the bill as amended, and ordered the bill reported as a clean bill incorporating all of the amendments agreed to. H.R. 4745 is that clean bill. The Committee on the Judiciary took up H.R. 4745 on May 6 and unanimously voted to report the bill favorably.

THE BILL AS REPORTED

H.R. 4745 modernizes and reforms Federal rape provisions by: (1) defining the offenses in gender neutral terms; (2) defining the offenses so that the focus of a trial is upon the conduct of the defendant, instead of upon the conduct or state of mind of the victim; (3)

³⁴ H.R. 6915, 96th Cong., 2d Sess. (1980). See H.R. REP. NO. 1396, 96th Cong., 2d Sess. 271-76 (1980). See also *Hearings on Revision of the Federal Criminal Code before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary*, 96th Cong., 2d Sess. 3813-19, 3854-59, 3867-70, 3925-75 (1980). The Subcommittee received testimony about reforming Federal rape laws during its work in the 95th Congress on revision of Federal criminal laws. See *Legislation to Revise and Recodify Federal Criminal Laws: Hearings on H.R. 6869 before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary*, 95th Cong., 1st & 2d Sess. 201-04, 2484-91, 2530 (1977-78).

³⁵ H.R. 5703, 97th Cong., 1st Sess. (1981). See *Hearings on Federal Criminal Law Revision before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary*, 97th Cong., 1st & 2d Sess. 1567-1638 (1981-82).

³⁶ *Hearings on Federal Rape Law Reform before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary*, 98th Cong., 2d Sess. (1984).

³⁷ 130 CONG. REC. H10859 (daily ed. Oct. 2, 1984).

expanding the offenses to reach all forms of sexual abuse of another; (4) abandoning the doctrines of resistance and spousal immunity; (5) and expanding Federal jurisdiction to include all Federal prisons. In addition, the bill carries forward the current Federal rule that corroboration of a victim's testimony is not required.

The offenses set forth in H.R. 4745 are drafted in gender-neutral terms. While the committee routinely utilizes gender-neutral drafting because that drafting style produces clearer and more precise language, gender-neutral drafting is particularly important for drafting sex offenses because gender neutrality facilitates the definition of those offenses.

The common law definition of rape that is a part of the federal statutes, requiring that sexual intercourse with a woman be carried out forcibly and "against the will" of the woman, gave rise to the development of a number of doctrines that—inappropriately and unwarrantedly—focused a rape trial upon the conduct of the victim. The Committee does not agree with these doctrines, and the offenses set forth in H.R. 4745 do not incorporate them.

The force requirement, traditionally, was considered relevant to show lack of consent. Thus, a basic treatise on criminal law asserts that—

"force" is not truly speaking an element of the crime itself, but if great force was not needed to accomplish the act the necessary *lack of consent* has been *disproved* in other than exceptional situations.³⁸

The resistance doctrine was applied to determine whether the requisite force, and therefore lack of consent, was present.³⁹ The resistance doctrine reflected a policy in direct conflict with the safety and welfare of sexual abuse victims.⁴⁰ Resistance under certain conditions is dangerous. Requiring a victim to become a martyr by testing the sincerity of an offender's threat is unfair and should not be imposed upon victims of sexual abuse offenses. The law does not impose a similar requirement upon victims of other crimes of violence.

The offenses set forth in H.R. 4745 do not incorporate the traditional rape law doctrine of "consent." The "consent" of rape law doctrine bears no relation to the consent involved when two persons voluntarily and willingly engage in sexual activity. The offenses set forth in H.R. 4745 also do not incorporate a resistance doctrine, which the Committee believes is neither fair nor necessary. Victim resistance is not an element of the prosecution's case, nor is it a defense that the victim did not resist.

Current Federal law is gender-biased and incomplete in the protection it offers from sexual abuse. Only females can be victimized; sexual abuse inflicted by a person of the same sex is not proscribed. Moreover, current Federal law protects victims only from unconsented-to sexual intercourse; other forms of sexual abuse are not

³⁸ R. PERKINS, CRIMINAL LAW 162 (2d ed. 1969) (emphasis in original).

³⁹ See Note, *Recent Statutory Developments in the Definition of Forcible Rape*, 61 VA. L. REV. 1500, 1504 (1975) ("Under carnal knowledge statutes, then, the crime is defined primarily in terms of the conduct of the victim.") (emphasis in original).

⁴⁰ See *id.* at 1506 (the resistance doctrine "demanded conduct which was inordinately dangerous.").

proscribed. H.R. 4745 is drafted broadly to cover the widest possible variety of sexual abuse, and to protect both males and females from that abuse.⁴¹

The common law doctrine of spousal immunity held that a man could not rape his wife, no matter how brutally the act was carried out.⁴² Rape was unique, therefore, because it was the only crime of violence for which marriage was a defense.⁴³ The spousal immunity doctrine has been rationalized in several ways,⁴⁴ but the Committee finds none of the rationalizations persuasive. Marital status should not ipso facto shield someone from liability for criminally injurious conduct.

Under present law, rape is a crime within the special territorial jurisdiction of the United States.⁴⁵ Thus, a rape occurring in a Federal prison is a Federal crime only if the prison is located within the special territorial jurisdiction of the United States. The Justice Department indicates that there are 7 Federal prisons not so located, so that rapes occurring within them are not Federal crimes.⁴⁶ The Committee believes that the Federal Government's obligation to maintain order within prisons requires that there be Federal jurisdiction over sexual abuse offenses occurring within every Federal prison. H.R. 4745 therefore expands Federal jurisdiction to include all Federal correctional, detention, and penal facilities.

The offenses set forth in H.R. 4745 do not require that the victim's testimony be corroborated. The Committee does not approve of the corroboration doctrine, which would not permit conviction of a defendant based solely upon the testimony of the victim. At its most stringent, this doctrine required that there be evidence, other than the victim's testimony, corroborating the use of force, penetration, and the identity of the assailant.⁴⁷ The absurd result was that if a woman were attacked and a rape attempt abandoned, the assailant could be convicted on the uncorroborated testimony of the victim. If the rape were carried out, however, the assailant could only be convicted if the victim's testimony were corroborated.⁴⁸

The corroboration doctrine is unnecessary. The function it serves—ensuring that there is sufficient evidence of an offense—is fully served by the requirement that the jury find beyond a reasonable doubt that the prosecution has proved every element of the of-

⁴¹ Thus, a female can be victimized by a male or a female, and a male by a male or a female. That victimization may take the form of intercourse or other types of sexual activity (e.g., fellatio or cunnilingus). That victimization may also take the form of penetrating a victim's anal or genital opening with a hand or finger, or with an object (a bottle or stick, e.g.), if the perpetrator, in doing so, had the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

⁴² See note 24 *supra*. Marital rape can be just as violent and brutal as stranger rape.

⁴³ See D. CHAPPELL, C. LEGRAND, & J. REICH, *FORCIBLE RAPE: AN ANALYSIS OF LEGAL ISSUES* 14 (1978).

⁴⁴ See Note, *The Marital Rape Exemption*, 52 N.Y.U. L. REV. 306, 307-16 (1977). MODEL PENAL CODE AND COMMENTARIES § 213.1, comment at 342-43; Bienen, *Rape III—National Developments in Rape Reform Legislation*, 6 WOMEN RTS. L. REP. 170, 184 (1980). D. FINKELHOR & K. YILO, *LICENSE TO RAPE: SEXUAL ABUSE OF WIVES* (1985).

⁴⁵ 18 U.S.C. 2031.

⁴⁶ *Hearings on Federal Rape Law Reform before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary*, 98th Cong., 2d Sess. 96 (1984).

⁴⁷ See MODEL PENAL CODE AND COMMENTARIES § 213.6, comment at 422-24 (1980). See generally Note, *The Rape Corroboration Requirement: Repeal Not Reform*, 81 VA. L. REV. 1365 (1972). Even though rape was a capital offense, the common law did not require corroboration. See J. WIGMORE, *EVIDENCE* § 2061 (3d ed. 1940).

⁴⁸ MODEL PENAL CODE AND COMMENTARIES § 213.6, comment at 424 n.46 (1980).

fense. The Committee considered including language in the legislation that would have specifically provided that corroboration was unnecessary, but decided not to do so. At present, corroboration is not required in Federal prosecutions,⁴⁹ and most States no longer require it.⁵⁰ In view of this, the Committee did not believe that Federal courts would engraft such a requirement onto the language of the offenses described in the bill.

The legal system's traditional approach to rape reflected a view of women and their role in society that may have been accepted in another day and age, but, in the Committee's opinion, no longer is. H.R. 4745 brings Federal law into line with modern perceptions of woman's place in our society.

SECTION-BY-SECTION ANALYSIS

NOTE OF DRAFTING

H.R. 4745 is drafted employing the format, conventions and techniques used in drafting the Criminal Code Revision Act of 1980 reported by this Committee in the 96th Congress.⁵¹ The format, conventions, and techniques used express in modern terms traditional principles of the criminal law.⁵² Thus, each offense set forth in H.R. 4745 describes (1) the conduct that is prohibited as well as any circumstance that must exist at the time of the conduct and any result that must attend the conduct; and (2) the state of mind that the defendant must have had.

The offenses set forth in H.R. 4745 define completely what the prosecution must prove to establish its case. Thus, for example, proposed section 2241 (aggravated sexual abuse) does not, by its terms, require the prosecution to show that the victim did not consent to the sexual act, nor does it require the prosecution to show that the victim resisted. The Committee believes such a requirement to be inappropriate to the offense defined in proposed section 2241 and intentionally omitted imposing such a requirement on the prosecution. Where the Committee believes it appropriate to the offense to require the prosecution to show that the conduct was engaged in without the victim's permission, such a requirement has explicitly been set forth.⁵³

Likewise, the Committee has explicitly addressed the matter of a marital relationship between the victim and the defendant. Unless specifically provided to the contrary, the marriage relationship does not provide a defense. Thus, for example, proposed section 2241 (aggravated sexual abuse) makes no mention of marital status, so a marriage relationship between the victim and defendant would not be a defense to a prosecution under proposed section 2241. On the other hand, in proposed section 2243 the marital status of the

⁴⁹ See note 22 *supra*.

⁵⁰ See *Hearings on Revision of the Federal Criminal Code before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary*, 96th Cong., 1st Sess. 3972 (1979) (Congressional Research Service memorandum) ("Corroboration has never been a requirement of the federal law and the overwhelming majority of state jurisdictions have abandoned it."); MODEL PENAL CODE AND COMMENTARIES §213.6, comment at 423 (1980).

⁵¹ H.R. 6915, 96th Cong., 2d Sess. (1980). See H.R. Rep. No. 1396, 96th Cong., 2d Sess. (1980).

⁵² See 128 CONG. REC. H8202-03 (daily ed. Sept. 30, 1982) (remarks of Rep. Rodino) (explaining drafting of the criminal provisions of the Victim and Witness Protection Act).

⁵³ See proposed section 2244(b).

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defendant and victim is relevant. There is a defense to a prosecution under proposed section 2243 that the defendant and victim were married. The defendant must establish the existence of the marital status by a preponderance of the evidence.

Finally, the Committee has explicitly addressed all appropriate matters of evidence and proof. Thus, proposed section 2243(d) sets forth a proof requirement concerning the defendant's state of mind in a prosecution under proposed section 2243(a) (sexual abuse of a minor). The Committee does not, for reasons stated above, believe a corroboration requirement is justified and has, therefore, intentionally not imposed such a requirement.

SECTION 1

Section 1 of the bill provides that its short title is the "Sexual Abuse Act of 1986".

SECTION 2

Section 2 of the bill adds a new chapter to title 18 of the United States Code, entitled "Sexual Abuse". The new chapter contains five new sections that set forth sexual abuse offenses and definitions applicable to those offenses.

Proposed section 2241 ("Aggravated sexual abuse") sets forth three offenses. Subsection (a) makes it an offense for someone, in the special maritime and territorial jurisdiction of the United States⁵⁴ or in a Federal prison, (1) to use force against another person and thereby cause that person to engage in a sexual act, or (2) to cause another person to engage in a sexual act by means of threats express or implied or placing that person in fear that any person will be subjected to death, serious bodily injury, or kidnapping.^{54a} Thus, it would be an offense, for example, for A to cause B to engage in a sexual act (with A or with someone else) by threatening to kill B's child. The maximum penalty for an offense under subsection (a) is life imprisonment and a fine "under this title".⁵⁵ There is no spousal immunity, and corroboration of the victim's testimony is not required. Lack of consent by the victim is not an element of the offense, and the prosecution need not introduce evidence of lack of consent or of victim resistance.

⁵⁴ The special maritime and territorial jurisdiction of the United States is defined in 18 U.S.C. 1. Certain offenses, including rape and carnal knowledge of a female under 16, that are prosecutable in the special maritime and territorial jurisdiction of the United States are also prosecutable if they occur within the special aircraft jurisdiction of the United States, which is defined in section 902(k)(1) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(k)). Section 3(d) of the bill amends that provision to apply to all of the sexual abuse offenses set forth in new chapter 109A.

^{54a} The requirement of force may be satisfied by a showing of the use, or threatened use, of a weapon; the use of such physical force as is sufficient to overcome, restrain, or injure a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim.

⁵⁵ The term "under this title" incorporates the provisions of 18 U.S.C. 3623, which presently sets forth provisions pertaining to maximum fines. A specific cross-reference was not used because the section number of the applicable section is scheduled to change from 3623 to 3571 when the majority of the sentencing provisions of the Sentencing Reform Act of 1984 take effect currently, November 1987. See Sentencing Reform Act of 1984, Pub. L. No. 98-473, § 212(a)(2), 18 Stat. 1987 (1984); Sentencing Reform Amendments Act of 1985, Pub. L. No. 99-217, § 2, 99 Stat. 1728 (1985).

Under 18 U.S.C. 3623, the maximum fine would be the greater of \$250,000 or twice the pecuniary loss to the victim (or twice any pecuniary gain derived from the offense by the defendant).

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Subsection (b) of proposed section 2241 makes it an offense for someone, in the special maritime and territorial jurisdiction of the United States or a Federal prison, (1) knowingly to render another person unconscious and thereby engage in a sexual act with that person, or (2) knowingly to administer a drug, intoxicant or other similar substance to another person, thereby (A) substantially impairing that other person's ability to appraise or control conduct and (B) engaging in a sexual act with that other person. The subsection requires that the drug, intoxicant, or other similar substance be administered by force or threat of force, or without the knowledge or permission of the person to whom the drug, intoxicant, or other similar substance is administered.^{55a} There is no spousal immunity, and corroboration of the victim's testimony is not required. The victim's lack of consent to the sexual act is not an element of the offense, and the prosecution need not introduce evidence of lack of such consent.⁵⁶ The maximum penalty for a violation of subsection (b) is life imprisonment and a fine "under this title".⁵⁷

Subsection (c) of section 2241 makes it an offense for someone, in the special maritime and territorial jurisdiction of the United States or a Federal prison, knowingly to engage in a sexual act with a person less than 12 years old, or to attempt to do so. The maximum penalty is life imprisonment and a fine "under this title".⁵⁸ This offense does not require the use of force or threats, or the administering of a drug, intoxicant, or other similar substance. It proscribes noncoercive conduct in which older, more mature persons take advantage of others whose capability to make judgments about sexual activity has not matured. There is, of course, no spousal immunity, and corroboration of the victim's testimony is not required. Lack of consent by the victim is not an element of the offense, and the prosecution need not introduce evidence of lack of consent.

Subsection (d) provides that, in a prosecution under subsection (c), the government need not prove that the defendant knew that the victim was less than 12 years old.⁵⁹ Thus, there is strict liability as to the age of a victim. Since subsection (c) protects children of very tender years, the Committee believes it appropriate to impose such a standard. As a commentator has noted with respect to the common law offense, "no credible error of perception would

^{55a} Paragraph (2) of subsection (b) covers a wide range of conduct—from a forcible act against a victim, to an act committed without the victim's knowledge or permission. The defendant may have had a specific intent to engage in a sexual act at the time of the administering of the substance, or that intention may have developed after the defendant administered the substance. The substance administered, moreover, can range from alcohol to the most dangerous controlled substance uncommon in a recreational context. All of these factors can affect the level of a defendant's culpability, a factor appropriately considered, together with other relevant factors (such as the severity of the offense and harm to the victim), in determining punishment.

⁵⁶ A prosecution under subsection (b)(2) requires proof that the victim did not know or permit the administration of a drug, intoxicant or other similar substance. If the charge is that the drug was administered without permission, the prosecution would, of course, have to show the lack of victim's permission.

⁵⁷ See, note 55, *supra*.

⁵⁸ See note 55, *supra*.

⁵⁹ Absent this provision, the government would have had to prove that the defendant knew that a victim was less than 12 years old, since the state of mind required for the conduct—knowing—is also required for the circumstance of the victim's age. See pp. 8–9, *supra* (Note on Drafting); H.R. REP. NO. 1396, 96th Cong., 2d Sess. 35 (1980).

be sufficient to recharacterize a child of such tender years as an appropriate object of sexual gratification."⁶⁰

Proposed section 2242 ("Sexual abuse") sets forth two offenses, the maximum punishment for each being 20 years imprisonment and a fine "under this title."⁶¹ Paragraph (1) of the section makes it an offense, in the special maritime and territorial jurisdiction of the United States or a Federal prison, for someone to cause another person to engage in a sexual act by means of express or implied threats or placing another in fear (other than by threats of, or placing in fear of, harm described in proposed section 2241(a)(2)). The requirement of force may be satisfied by a showing that the threat or intimidation created in the victim's mind an apprehension or fear of harm to self or others.

Paragraph (2) of proposed section 2242 makes it an offense, in the special maritime and territorial jurisdiction of the United States or a Federal prison, to engage in a sexual act with another person who is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act. There is no spousal immunity, and corroboration of the victim's testimony is not required. Lack of consent by the victim is not an element of the offense, and the prosecution need not introduce evidence of lack of consent or of victim resistance.⁶²

Section 2243 ("Sexual abuse of a minor or ward") defines two offenses. Subsection (a) makes it an offense, in the special maritime and territorial jurisdiction of the United States or a Federal prison, for a person to engage in a sexual act with someone who is (1) at least 12 but less than 16 years old and (2) at least four years younger than that person. The maximum punishment is five years imprisonment and a fine "under this title."⁶³

This offense, like that described in proposed section 2241(c), does not require the use of force or threats, or the administering of a drug, intoxicant, or other similar substance. It applies to behavior that the participants voluntarily and willingly engage in. The offense is intended to reach older, mature persons who take advantage of younger, immature persons, but not to reach sexual activity between persons of comparable age.⁶⁴ Corroboration of the victim's testimony is not required. Since subsection (a) reaches noncoercive conduct, and since some States permit marriage by persons of less than 16 years of age, subsection (c)(2) sets forth a defense that the parties were married at the time of the sexual act. The defendant has the burden of establishing this defense by a preponderance of the evidence.

⁶⁰ MODEL PENAL CODE AND COMMENTARIES § 213.6, comment at 414 (1980). Although the common law offense applied to children under the age of 10, the Committee believes that comment equally applicable to children under the age of 12.

⁶¹ See note 55, *supra*.

⁶² In a prosecution under proposed section 2242(2)(B), the prosecution must show that the victim was physically incapable of declining participation in the sexual act or of communicating an unwillingness to engage in the sexual act. The prosecution is not required to show that the victim did not consent to the sexual act.

⁶³ See note 55, *supra*.

⁶⁴ See SEN. REP. NO. 553, 96th Cong., 2d Sess. 600 (1980); *Legislation to Revise and Recodify Federal Criminal Laws: Hearings on H.R. 6869 before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary*, 95th Cong., 1st & 2d Sess. 203 (1977-78) (Dept. of Justice Memorandum).

Whether a sexual act involving a minor less than 16 years old is criminal (and, if it is, the severity of the offense) will depend upon the circumstances involved. If the young person is between the ages of 12 and 16, and if force is used or if threats of death, serious bodily harm, or kidnapping are involved, the applicable provision is proposed section 2241(a). If the child is less than 12 years old and if force is used or threats of death, serious bodily harm, or kidnapping are involved, both proposed section 2241(a) and proposed section 2241(c) are applicable. If the young person is between the ages of 12 and 16, and other threats are used, the applicable provision is proposed section 2242(1). If the child is less than 12 years old, the applicable provisions are proposed sections 2241(c) and 2242(1). If the offender renders a young person between the ages of 12 and 16 unconscious or administers a drug to that young person (by force, threats, or without the knowledge or permission of the child), then the applicable provision is proposed section 2241(b). The applicable provisions are proposed sections 2241(b) and 2241(c) if the child is under 12.

If none of those factors are involved, however, then the ages of the participants are important. If the victim is less than 12 years old, then there is an offense whatever the age of the other party. If the young person is at least 12 but not 16 years old, however, the age of the other party becomes relevant. If the other person is 4 or more years older than the young person, then there is an offense under proposed section 2243(a). If the young person is not 4 or more years younger than the other person, then there is no offense.

Subsection (b) of proposed section 2243 makes it an offense, in the special maritime and territorial jurisdiction of the United States or a Federal prison, for a person to engage in a sexual act with someone (1) who is in official detention, and (2) who is under the custodial supervisory, or disciplinary authority of the defendant. The maximum punishment is one year imprisonment and a fine "under this title".⁶⁵ Corroboration of the victim's testimony is not required. It may be possible (though probably only theoretically) that the person in official detention is married to the person who has supervisory authority. Since the offense involves noncoercive conduct, subsection (c)(2) sets forth a defense that the parties were married at the time of the sexual act. The defendant has the burden of establishing this defense by a preponderance of the evidence.

Subsection (c), as has already been noted, sets forth defenses applicable to prosecutions under proposed section 2243. The defendant has the burden to show the existence of the defenses set forth in subsection (c) by a preponderance of the evidence.⁶⁶

It is unclear whether a reasonable mistake as to age could be raised as a defense under current law. At common law, there was no such defense.⁶⁷ This may be attributable to the common law age of consent being 10 years old. "Focus on so young an age made strict liability tolerable, for no credible error regarding the age of a child in fact less than 10 years old would render the actor's con-

⁶⁵ See note 55, *supra*.

⁶⁶ See MODEL PENAL CODE AND COMMENTARIES § 213.6, comment at 415 (1980).

⁶⁷ *Id.* at 414.

duct anything less than a dramatic departure from societal norms."⁶⁸

The Committee has retained the common law's strict liability approach for conduct involving very young persons (those under the age of 12). However, where the conduct is noncoercive and involves persons who are not so young that a mistake about age would not be "a dramatic departure from societal norms," the Committee believes a reasonable mistake about age defense appropriate. Subsection (d) therefore provides that in a prosecution under proposed section 2243(a) the government need not prove that the defendant knew that the young person was (1) less than 16 years old and (2) 4 or more years younger than him or herself.⁶⁹

Proposed section 2244 ("Abusive sexual contact") describes offenses involving sexual contact rather than a sexual act. Subsection (a)(1) makes it an offense, in the special maritime and territorial jurisdiction of the United States or a Federal prison, for someone to engage in, or cause, sexual contact with or by another person if to do so would violate proposed section 2241 had the sexual contact been a sexual act. The maximum punishment is five years imprisonment and a fine "under this title."⁷⁰ There is no spousal immunity, and corroboration of the victim's testimony is not required. Lack of consent by the victim is not an element of the offense, and the prosecution need not introduce evidence of lack of consent.⁷¹ Subsection (a)(2) makes it an offense, in the special maritime and territorial jurisdiction of the United States or a Federal prison, for someone to engage in, or cause, sexual contact with or by another person if to do so would violate proposed section 2242 had the sexual contact been a sexual act. The maximum punishment is three years imprisonment and a fine "under this title."⁷² There is no spousal immunity, and corroboration of the victim's testimony is not required. Lack of consent by the victim is not an element of the offense, and the prosecution need not introduce evidence of lack of consent.⁷³ Subsection (a)(3) makes it an offense for someone, in the special maritime and territorial jurisdiction of the United States or in Federal prison, to engage in, or cause, sexual contact with or by another person if to do so would violate proposed section 2243(a) had the sexual contact been a sexual act. The maximum punishment is imprisonment for one year and a fine "under this title."⁷⁴ Corroboration of the victim's testimony is not

⁶⁸ But see *Hearings on Federal Rape Law Reform before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary*, 98th Cong., 2d Sess. 114 (1984) (statement of Leigh Bienen) (arguing that "the mistake-as-to-age defense has been used disingenuously as a strategy for introducing evidence concerning the victim's sexual behavior and for eliciting prejudicial and hostile attitudes towards victims."); Bienen, *Mistakes*, 7 *PHILOSOPHY & PUB. AFF.* 224 (1978).

⁶⁹ See note 59 *supra*.

⁷⁰ See note 55, *supra*.

⁷¹ If the prosecution is for sexual contact under circumstances set forth in proposed section 2241(b)(2), the prosecution must show that the victim did not give permission for the administering of the drug.

⁷² See note 55, *supra*.

⁷³ If the prosecution is for sexual contact under circumstances set forth in proposed section 2242(2)(B), the prosecution must show that the victim was physically incapable of declining participation in the sexual act or of communicating an unwillingness to engage in the sexual act. The prosecution need not show that the victim did not consent to the sexual act.

⁷⁴ The term "under this title" incorporates the provisions of 18 U.S.C. 3623, which presently sets forth provisions pertaining to maximum fines. A specific cross-reference was not used because the section number of the applicable section is scheduled to change from 3623 to 3571

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required. Subsection (a)(4) makes it an offense for someone, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, to engage in, or cause, sexual contact with or by another person if to do so would violate proposed section 2243(b) had the sexual contact been a sexual act. The maximum punishment is imprisonment for 6 months and a \$5,000 fine.⁷⁵ Corroboration of the victim's testimony is not required.

Subsection (b) of proposed section 2244 makes it an offense for someone, in the special maritime and territorial jurisdiction, or a Federal prison, knowingly to engage in sexual contact with another person without that other person's permission. The maximum punishment is imprisonment for six months and a \$5,000 fine.⁷⁶ Corroboration of the victim's testimony is not required.

Proposed section 2245 defines terms used in the new chapter. Paragraph (1) defines the term "prison" to mean a correctional, detention, or penal facility. Paragraph (2) defines the term "sexual act" to mean (1) contact between the penis and the vulva, or the penis and the anus, that involves penetration, however slight;^{76a} (2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. Penetration may be proved by indirect or circumstantial evidence. It is not necessary that the vulva or anus be entered, and emission is not required.

Paragraph (3) of proposed section 2245 defines the term "sexual contact" to mean an intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.⁷⁷ Paragraph (4) defines the term "serious bodily injury" to mean an injury to the body that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Paragraph (5) of proposed section 2245 defines the term "official detention" to mean (1) detention by a Federal officer or employee (or under the direction of such person) following arrest for an offense, following surrender in lieu of arrest for an offense, following

when the majority of the sentencing provisions of the Sentencing Reform Act of 1984 take effect (currently, November 1987). See Sentencing Reform Act of 1984, Pub. L. No. 98-473, § 212(a)(2), 98 Stat. 1987 (1984); Sentencing Reform Amendments Act of 1985, Pub. L. No. 99-217, § 2, 99 Stat. 1723 (1985).

Under 18 U.S.C. 3623, the maximum fine would be the greater of \$100,000 or twice the pecuniary loss of the victim (or twice any pecuniary gain derived from the offense by the defendant).

⁷⁵ The Committee did not use a cross-reference because 18 U.S.C. 3623 does not set forth a fine amount for misdemeanors of 6 months imprisonment. The \$5,000 amount was selected so that the offense set forth in proposed section 2244(a)(4) would be a petty offense. See 18 U.S.C. 1.

⁷⁶ See note 75, *supra*.

^{76a} It is not necessary that penetration of the genital or anal openings be complete. Any union with the anterior of the vagina, known as the vulva or labia, is sufficient, as is union with the buttocks.

⁷⁷ The touching must be "intentional," which requires proof that the touching was the defendant's conscious objective. See H.R. REP. NO. 1396, 96th Cong., 2d Sess. 33 (1980). There is a narrow, but important distinction, between "intentional" and "knowing." See *id.*; 123 CONG. REC. H8203 (daily ed. Sept. 30, 1982) (remarks of Rep. Rodino).

a charge or conviction of an offense (or an allegation or finding of juvenile delinquency), following commitment as a material witness, following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or (2) custody by a Federal officer or employee (or under the direction of such person) for purposes incident to any detention just described, including transportation, medical diagnosis or treatment, court appearance, work and recreation. The term "official detention" does not include supervision or other control (other than custody during specified hours or days) after release on bail, on probation, on parole, or following a finding of juvenile delinquency.

SECTION 3

Section 3 of the bill makes conforming and related changes in other provisions of Federal law. Subsection (a) makes such changes to provisions in title 18 of the United States Code. Subsection (a)(1) deletes the chapter of title 18 containing the rape and "statutory rape" provisions of current law. Subsections (a)(2) and (3), in effect, delete the current law offense of assault with intent to commit rape. Such an offense is necessary in current law, which does not proscribe attempted rape, but is no longer necessary because new chapter 109A proscribes attempts, and an assault with intent to commit rape will always constitute an attempt under new chapter 109A. Subsection (a)(4) amends the felony-murder rule in the murder provision of title 18 to include a killing during the commission or attempted commission of, or flight from, the offenses of aggravated sexual abuse or sexual abuse. Subsection (a)(5) amends the Major Crimes Act to ensure that there is Federal jurisdiction over felonies under chapter 109A committed by Indians in Indian country. Subsection (a)(6) replaces a cross-reference in section 3185 of title 18, changing "rape" to "a felony under chapter 109A of this title." Subsection (a)(7) amends the table of chapters at the beginning of part I of title 18 by deleting the entry for chapter 99 and inserting an entry for chapter 109A.

Subsection (b) makes conforming and related changes in other titles of the United States Code. Subsection (b)(1) amends the Public Health Service Act by deleting references to rape and rape victims and replacing those terms with sex offense and victims of sex offenses. Subsections (b) (2), (3), (4), (5), (6), and (7) make similar changes in the Mental Health Systems Act. Subsection (b)(8) deletes cross-references in the Federal Aviation Act of 1958 to the rape and statutory rape provisions of title 18 and replaces them with a reference to chapter 109A.

SECTION 4

Section 4 of the bill provides that the effective date of the legislation is 30 days after the date of enactment.

OVERSIGHT FINDING

The Committee makes no oversight findings with respect to this legislation.

In regard to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to this Committee by the Committee on Government Operations.

NEW BUDGET AUTHORITY

In regard to clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 4745 creates no new budget authority or increased tax expenditures for the Federal Government.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill will have no inflationary impact on prices or costs in the operation of the national economy.

FEDERAL ADVISORY COMMITTEE ACT OF 1972

The Committee finds that this legislation does not create any new advisory committee within the meaning of the Federal Advisory Committee Act of 1972.

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 8, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives,
Rayburn Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4745, the Sexual Abuse Act of 1986, as ordered reported by the House Committee on the Judiciary, May 6, 1986. We estimate that no significant cost to the federal government and no cost to state or local governments would result from enactment of this bill.

H.R. 4745 repeals the existing federal rape statutes and creates a new Chapter 109A as part of Title 18 of the United States Code that comprehensively defines federal sexual abuse offenses. The new chapter provides much more specific definitions of federal sexual abuse offenses, expands federal jurisdiction to include all federal prisons, and abandons the doctrine of spousal immunity, among other changes. It also makes conforming amendments to a number of other statutes that currently refer to rape.

Based on information from the Department of Justice, we expect that the bill would provide a more specific statute on which to base the investigation and prosecution of these activities. It is not expected to result in an increased number of investigations, but may simplify law enforcement activities.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

COST ESTIMATE

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee agrees with the cost estimate of the Congressional Budget Office and estimates that the enactment of this legislation will not result in any significant cost to the Federal Government, and will not result in any cost to State and local governments.

COMMITTEE VOTE

The Committee reported H.R. 4745 on May 6, 1986, by voice vote, a quorum of Members being present.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

General provisions	Sec. 1
* * * * *	
[99. Rape.....	2031]
* * * * *	
109. Searches and seizures	2231
109A. <i>Sexual Abuse</i>	2241.
* * * * *	

CHAPTER 7—ASSAULT

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§ 113. Assaults within maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows:

(a) Assault with intent to commit murder [or rape], by imprisonment for not more than twenty years.

(b) Assault with intent to commit any felony, except murder or [rape], *a felony under chapter 109A*, by fine of not more than \$3,000 or imprisonment for not more than ten years, or both.

* * * * *

CHAPTER 51—HOMICIDE

* * * * *

§ 1111. Murder

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson escape, murder, kidnapping, treason, espionage, sabotage, [, rape] *aggravated sexual abuse or sexual abuse*, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

* * * * *

CHAPTER 53—INDIANS

* * * * *

§ 1153. Offenses committed within Indian country

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnaping, maiming [, rape, involuntary sodomy, carnal knowledge of any female, not his wife, who has not attained the age of sixteen, years, assault with intent to commit rape,] incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

As used in this section, the offenses of burglary [, involuntary sodomy,] and incest shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

In addition to the offenses of burglary [, involuntary sodomy] and incest, any other of the above offenses which are not defined and punished by federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

* * * * *

[CHAPTER 99—RAPE.

[Sec.

[2031. Special maritime and territorial jurisdiction.

[2032. Carnal knowledge of female under 16.

[§ 2031. Special maritime and territorial jurisdiction

[Whoever, within the special maritime and territorial jurisdiction of the United States commits rape shall suffer death, or imprisonment for any term of years or for life.

[§ 2032. Carnal knowledge of female under 16

[Whoever, within the special maritime and territorial jurisdiction of the United States, carnally knows any female, not his wife, who has not attained the age of sixteen years, shall, for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense, be imprisoned not more than thirty years.]

* * * * *

CHAPTER 109A—SEXUAL ABUSE

Sec.

2241. Aggravated sexual abuse.

2242. Sexual abuse.

2243. Sexual abuse of a minor or ward.

2244. Abusive sexual contact.

2245. Definitions for chapter.

§ 2241. Aggravated sexual abuse

(a) BY FORCE OR THREAT.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly causes another person to engage in a sexual act—

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) BY OTHER MEANS.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal Prison, knowingly—

(1) renders another person unconscious and thereby engages in a sexual with act that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—

(A) substantially impairs the ability of that other person to appraise or control conduct; and

(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(c) WITH CHILDREN.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(d) STATE OF MIND PROOF REQUIREMENT.—In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

§ 2242. Sexual abuse

Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly—

(1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threat-

ening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or

(2) engages in a sexual act with another person if that other person is—

(A) incapable of appraising the nature of the conduct; or

(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act; or attempts to do so, shall be fined under this title, imprisoned not more than 20 years, or both.

§ 2243. Sexual abuse of a minor or ward

(a) *OF A MINOR.*—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who—

(1) has attained the age of 12 years but has not attained the age of 16 years; and

(2) is at least four years younger than the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than five years, or both.

(b) *OF A WARD.*—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who is—

(1) in official detention; and

(2) under the custodial, supervisory, or disciplinary authority of the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than one year, or both.

(c) *DEFENSES.*—(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.

(2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

(d) *STATE OF MIND PROOF REQUIREMENT.*—In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew—

(1) the age of the other person engaging in the sexual act; or

(2) that the requisite age difference existed between the persons so engaging.

§ 2244. Abusive sexual contact

(a) *SEXUAL CONDUCT IN CIRCUMSTANCES WHERE SEXUAL ACTS ARE PUNISHED BY THIS CHAPTER.*—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in or causes sexual contact with or by another person, if so to do would violate—

(1) section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than five years, or both;

(2) section 2242 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;

(3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than one year, or both; or

(4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined not more than \$5,000, imprisoned not more than six months, or both.

(b) *IN OTHER CIRCUMSTANCES.*—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in sexual contact with another person without that other person's permission shall be fined not more than \$5,000, imprisoned not more than six months, or both.

§ 2245. Definitions for chapter

As used in this chapter—

(1) the term "prison" means a correctional, detention, or penal facility;

(2) the term "sexual act" means—

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; and

(3) the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(4) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(5) the term "official detention" means—

(A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or

(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation;

but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency.

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PART II—CRIMINAL PROCEDURE

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CHAPTER 209—EXTRADITION

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§ 3185. Fugitives from country under control of United States into the United States

Whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who, having violated the criminal laws in force therein by the commission of any of the offenses enumerated below, departs or flees from justice therein to the United States, shall when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed.

(1) * * *

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(12) [Rape;] *A felony under chapter 109A of this title;*

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PUBLIC HEALTH SERVICE ACT

* * * * *

TITLE XIX—BLOCK GRANTS

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PART A—PREVENTIVE HEALTH AND HEALTH SERVICES BLOCK GRANT

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USE OF ALLOTMENTS

SEC. 1904. (a)(1) Except as provided in subsection (b) and (c), amounts paid to a State under section 1903 from its allotment under section 1902(a) and amounts transferred by the State for use under this part may be used for the following:

(A) * * *

(G) Providing services to **[rape victims and for rape prevention]** *victims of sex offenses and for prevention of sex offenses.*

* * * * *

APPLICATION AND DESCRIPTION OF ACTIVITIES

SEC. 1905. (a) * * *

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(c) As part of the annual application required by subsection (a), the chief executive officer of each State shall certify that the State—

(1) * * *

* * * * *

(6) has in effect a system to protect from inappropriate disclosure patient and **[rape]** *sex offense* victim records maintained by the State in connection with an activity funded under this part or by any entity which is receiving payments from the allotment of the State under this part.

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MENTAL HEALTH SYSTEMS ACT

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TITLE VI—**[RAPE]** *SEX OFFENSE* PREVENTION AND CONTROL

[RAPE] *SEX OFFENSE* PREVENTION AND CONTROL

SEC. 601. (a) The Secretary, acting through the National Center for the Prevention and Control of **[Rape]** *Sex Offenses*, (hereafter in this section referred to as the "Center"), may, directly or by grant, carry out the following:

(1) A continuing study of **[rape]** *sex offenses*; including a study and investigation of—

(A) the effectiveness of existing Federal, State, and local laws dealing with **[rape]** *sex offenses*;

(B) the relationship, if any, between traditional legal and social attitudes toward sexual roles, **[the act of rape]** *sex offense*, and the formulation of laws dealing with rape;

(C) the treatment of the victims of **[rape]** *sex offenses* by law enforcement agencies, hospitals or other medical institutions, prosecutors, and the courts;

(D) the causes of **[rape]** *sex offenses*, identifying to the degree possible—

(i) social conditions which encourage sexual attacks, and

(ii) the motives of offenders, and

(E) the impact of **[rape]** *sex offense* on the victim and family of the victim;

(F) sexual assaults in correctional institutions;

(G) the estimated actual incidence of forcible **[rape]** *sex offenses* as compared to the reported incidence of forcible **[rape]** *sex offenses* and the reasons for any difference between the two; and

(H) the effectiveness of existing private and local and State government educational, counseling, and other programs designed to prevent and control **[rape]** *sex offenses*

* * * * *

(3) The development and maintenance of an information clearinghouse with regard to—

(A) the prevention and control of **[rape]** *sex offenses*;

(B) the treatment and counseling of the victims of **[rape]** *sex offenses* and their families; and

(C) the rehabilitation of offenders.

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(e) For purposes of subsection (a), the term "**[rape]**" *sex offense* includes statutory and attempted rape and any other criminal sexual assault (whether homosexual or heterosexual) which involves force or the threat of force.

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SECTION 902 OF THE FEDERAL AVIATION ACT OF 1958

GENERAL

SEC. 902. (a) * * *

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CERTAIN CRIMES ABOARD AIRCRAFT IN FLIGHT

(k)(7) Whoever, while aboard an aircraft within the special aircraft jurisdiction of the United States, commits an act which, if committed within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18, United States Code, would be in violation of section 113, 114, 661, 662, 1111, 1112, 1113, **[2031, 2032,]** *chapter 109A* or 2111 of such title 18 shall be punished as provided therein.

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